The Deputy Director
Central Intelligence Agency

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Washington, D.C. 20505

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Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Both Houses of Congress currently have before them legislation authorizing appropriations for the Department of State and related agencies for fiscal year 1979. The bills are H.R. 12598 and S. 3076, both entitled the "Foreign Relations Authorization Act, Fiscal Year 1979." I would like to express concern with certain provisions in these bills--specifically, sections 119 and 501-502 of S. 3076 and sections 501-504 of H.R. 12598.

Section 119 of the Senate bill concerns what is commonly referred to as the "Role of the Ambassador Legislation" (22 U.S.C. 2680a). This section of S. 3076 would amend 22 U.S.C. 2680a by adding the following language to paragraph (3) between the words "country" and "shall": "notwithstanding any other provision of law." This amendment is of concern to us because of its potential construction as superseding the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods against unauthorized disclosure (section 102(d)(3) of the National Security Act of 1947, as amended, 50 U.S.C. 403).

The amendment in section 119 would leave intact the present prefatory language to 22 U.S.C. 2680a: "Under the direction of the President--" In our view, this language provides the appropriate statutory formula reflecting the respective responsibilities, in terms of our interests for example, of the Director of Central Intelligence and the Secretary of State. Addition of the phrase "notwithstanding any other provision of law" could be construed as a statutory supersession of the Director's authority cited above. In our view, this is both unnecessary and inappropriate, and we oppose inclusion of this language in S. 3076.

Sections 501 and 502 of S. 3076 concern the determination and reporting of "international agreements" pursuant to the so-called "Case/Zablocki Act" (1 U.S.C. 112b). Among other things, section 501 would amend 1 U.S.C. 112b by providing as follows:

1. Oral agreements would have to be reduced to writing and thereafter reported to the Congress if determined to be "international agreements."

2. No "international agreement" (including intelligence agreements) could be signed or concluded without the prior approval of the Secretary of State or the President.

3. The Secretary of State is expressly granted the power to determine, for the Executive Branch, what arrangements constitute "international agreements."

4. Rules and regulations necessary to carry out the Case/Zablocki Act shall be issued by the President, through the Secretary of State.

In our view, extending the Case/Zablocki Act to cover oral agreements is not consistent with what we understand the purpose of the Act to be; namely, that the Executive keep the Congress informed of all significant agreements with foreign governments having a binding effect on the United States. A statutory requirement concerning oral agreements could pose a serious practical burden in terms of what should be "reduced to writing" and in what terms; the numbers of such matters could be extremely large.

More significantly, the provision in section 119 of S. 3076 that relate to oral agreements could have a serious negative impact on intelligence activities conducted pursuant to the Director's authority which may involve, for example, liaison relationships with foreign counterparts. This impact could extend not only to the Director's ability to protect sensitive intelligence information from disclosure, but to our ability to maintain certain authorized intelligence relationships, and of the corresponding willingness of foreign entities to deal with us. For these reasons, we oppose inclusion in legislation of the provisions in section 119 of S. 3076 relating to oral agreements.

We are also concerned with those provisions in section 119 regarding prior approval of agreements by the Secretary of State or the President. As to intelligence matters conducted pursuant to the authority of the Director, requiring the approval of the Secretary of State is inappropriate and objectionable. The alternative of placing the burden on the President for reviewing and approving intelligence activities that are conducted by CIA which, in the first instance is under the National Security Council, of which the President is a member (50 U.S.C. 402-403), is at once unnecessary and inappropriate in statute. We believe this provision in section 119 should be deleted.

Finally as to section 119 of S. 3076, in our view the provision requiring that the President issue rules and regulations to implement 1 U.S.C. 112b inappropriately specifies that this shall be done "through the Secretary of State." This additional provision is unnecessary and could confuse the ultimate responsibility of the President to issue the relevant rules and regulations, in consultation with, or as delegated to, those of his officers as he deems appropriate, not necessarily limited to the Secretary of State. Agencies and departments other than the Department of State are affected by, or conduct activities that are required to be reported under, the Case/Zablocki Act. We therefore recommend deletion of the words "... the Secretary of State or ..." from proposed subparagraph (c)(1)(A) in section 119 of S. 3076.

In the House bill, H.R. 12598, we have been concerned with Title V, entitled "Science, Technology, and American Diplomacy." It has been our concern since we first reviewed this title, that its scope was not clear, both as to what constitute "science or technology" activities, agreements, or initiatives and as to the responsibilities therefor of respective Federal agencies and departments, including the Department of State. We fail to see the need for such legislation. The Committee on International Relations report contains language to the effect that Title V of H.R.12598 is not intended to affect intelligence activities. This language is consistent with understandings conveyed to us as to the scope of the legislation. Although we endorse this language, we believe the bill itself should be amended to include provisions to this effect. H.R. 12598, as reported by the International Relations Committee, also contains language protecting against public disclosure any information relating to intelligence sources and methods that might be related to reporting on science and technology matters under the bill. We support this provision.

We have been somewhat concerned that these bills, particularly the provisions discussed above, were not subject to the full and necessary coordination during the earlier stages of their consideration by the congressional committees which we believe they warrant. We would like to discuss these matters with you in more detail at your convenience. We are continuing our review of these and related bills in order to ensure that our interests are not adversely affected.

We recommend that the Administration oppose enactment of section 119 and Title V of S. 3076 and Title V of H.R. 12598; we would appreciate the opportunity to work with you and other interested agencies and departments in presenting this position to the Congress.

Sincerely,

SIGNED
Frank Carlucci

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